TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. ~~129~~ 132.

CHARLES S. ELDER, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF COLORADO ON THE INFORMATION OF GEORGE STIDGER, THE DISTRICT ATTORNEY OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF COLORADO, ON THE RELATION OF CHARLES W. BADGLEY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF COLORADO.

FILED OCTOBER 10, 1905.

(19,931.)

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CHARLES S. ELDER, PLAINTIFF IN ERROR,

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1 In the Supreme Court of the State of Colorado.

Pleas before the Honorable the Supreme Court of the State of Colorado, sitting at Denver, in said State, at a term thereof begun and held at the Capitol Building in said city on the second Monday of April, A. D. 1905, and of the Independence of the United States the one hundred and twenty-ninth.

Present: Hon. William H. Gabbert, Chief Justice, Hon. Robert W. Steele, Hon. John Campbell, Hon. Julius C. Gunter, Hon. Luther M. Goddard, Hon. John M. Maxwell, Hon. George W. Bailey, Associate Justices. N. C. Miller, Esq., Attorney General, Richard W. Watson, Esq., Bailiff, Horace G. Clark, Esq., Clerk.

Be it remembered, that heretofore, and on to-wit, the 8th day of April, A. D. 1905, there was filed in the office of said Clerk the following transcript of record, bill of exceptions and assignment of errors, which are in words and figures as follows, to-wit:

2 District Court, City and County of Denver, Second Judicial District.

STATE OF COLORADO, *City and County of Denver, ss:*

Pleas in the District Court of the City and County of Denver, State of Colorado, in the First Division thereof, before the Hon. John I. Mullins, one of the Judges of the Second Judicial District of the said State, at a term thereof begun and held at the Court House in Denver, in said County, on the second Tuesday (it being the tenth day) of January, A. D. One Thousand Nine Hundred and Five.

Present: Hon. John I. Mullins, one of the Judges of the District Court. Henry A. Lindsley, Esq., District Attorney of said District. Hamilton Armstrong, Esq., Sheriff of said County. Otis B. Spencer, Esq., Clerk of said Court.

38351.

3 THE PEOPLE OF THE STATE, ETC.,
vs.
CHARLES S. ELDER.

Be it Remembered, that heretofore, and on, to-wit, the 27th day of February, A. D., 1905, came the Petitioner by his attorney, George Stidger, Esq., and filed herein his Amended Petition;

And said Amended Petition is in words and figures as follows, to-wit:

4 STATE OF COLORADO, *City and County of Denver, ss:*

In the District Court.

THE PEOPLE OF THE STATE OF COLORADO on the Information of GEORGE STIDGER, the District Attorney of the Second Judicial District of the State of Colorado, and the Relation of CHARLES W. BADGLEY, Plaintiff,

vs.

CHARLES S. ELDER, Defendant.

Amended Complaint.

Now come the People of the State of Colorado by George Stidger, the District Attorney of the Second Judicial District of said state and on the relation of Charles W. Badgley and give this Honorable Court to understand and be informed in this its amended complaint by leave of the Court first had:—

That one Charles S. Elder a citizen of said state and a resident and qualified elector of the city and county of Denver therein did on, to-wit, the 10th day of January A. D. 1905 without any warrant or authority of law usurp and intrude himself into the office of Treasurer of said city and county of Denver and ever since has continued and still does continue to unlawfully usurp and intrude himself into the said office of Treasurer of the said city and county of Denver and is still usurping and intruding himself into and unlawfully holding and exercising the functions, powers and duties of Treasurer of said city and county of Denver.

5 2. That on, to-wit, the 8th day of November, A. D. 1904, there was held in the city and county of Denver a general election under and by virtue of the Constitution and Statutes of the State of Colorado, at which election, state, county and precinct officers were voted for and at said election in said city and county of Denver your plaintiff was the candidate of the Republican party for the office of Treasurer of said city and county of Denver and the defendant Charles S. Elder was the candidate of the Democratic party for said office and that at said election said plaintiff Charles W. Badgley and said defendant Charles S. Elder were voted for at said election by the electors of said city and county of Denver for said office.

3. That during all the time herein mentioned the said plaintiff Charles W. Badgley was a duly and legally qualified elector of the state of Colorado and of said city and county of Denver and possessed all the qualifications entitling him to said office of Treasurer and rendering him eligible to said office and was and is in all respects eligible to and qualified to hold said office as required by law.

4. That thereafter and on, to-wit, the 9th day of January A. D. 1905, the Temporary Election Commission of the City and County of Denver, in accordance with the provisions of the Charter of the said City and County of Denver adopted as provided by Article XX of the Constitution, on the 29th day of March A. D. 1904, two copies

of which charter (together with the vote for and against the same) duly certified by the Clerk of the said city and county, were within ten (10) days thereafter filed with the Secretary of State of the state of Colorado, which said charter provides that said election Commission shall have the power to canvass the returns of all elections held within said city and county and to issue certificates of election to persons elected to office in said city and county, completed the canvass and the making of the abstract of the votes cast at said election in said city and county of Denver for the several candidates for the office of Treasurer of said city and county as well as for the candidates for the several other County offices voted for at said election and did upon said day canvass the votes cast at said election for the said respective candidates to-wit; the plaintiff and defendant and all other officers voted for at said election and did on the said 9th day of January A. D. 1905 find and declare from said canvass that said plaintiff received at said election the highest number of legal votes cast for any candidate for said office of Treasurer of said city and county of Denver and did upon said day execute and deliver to said plaintiff, Charles W. Badgley, a certificate of his election in and by which certificate said Election Commission did declare said plaintiff to be elected to said office of Treasurer of the said city and county of Denver; that the term of office of said Treasurer to which said plaintiff Charles W. Badgley was elected and to which office he received a certificate of election as aforesaid, commenced on the second Tuesday of January A. D. 1905, being the 10th day of January A. D. 1905.

5. That for some time prior to and down to the 10th day of January A. D. 1905 said defendant Charles S. Elder was the acting Treasurer of said city and county of Denver and was in the possession of said office of Treasurer and of the books, records, papers, documents, monies and other property belonging to said office of Treasurer on the 10th day of January A. D. 1905.

6. Plaintiff further alleges that on the said 10th day of January A. D. 1905, said plaintiff for the purpose of qualifying for said office and to enter into the possession of said office and upon the discharge of its duties according to law, did execute his official bond as such Treasurer for the city and county of Denver in the penal sum of five hundred thousand dollars which is the sum as required by law and conditioned according to law which bond was also executed by sureties good and sufficient as required by law and said plaintiff did also make and subscribe a written oath of office as such Treasurer according to law and did then and there present said official bond and official oath to the Mayor of the city and county of Denver, and requested said Robert Speer, who was then and there Mayor, to approve the same and to receive and accept the same. That the said Mayor of the city and county of Denver then and there refused to accept or receive said bond or oath and refused to consider the same on the ground then and there stated by said Robert Speer, Mayor as aforesaid, that there was no vacancy in said office of Treasurer for the city and county of Denver to fill, at said November election, and that said office was already filled by an incumbent

other than the Plaintiff—meaning the defendant, and that he would not for that reason consider or examine into the sufficiency of said bond and oath or either. That then and there plaintiff also offered said official bond and official oath to Sommers who was then and there Clerk for the city and county of Denver with a request to file the same in his office, for the purpose of qualifying said plaintiff to enter into possession of said office of Treasurer as aforesaid but that said Sommers clerk as aforesaid then and there refused to
8 accept the said bond or written oath of office and refused to file the same in his said office.

That on the same day plaintiff presented his said official bond and official oath to the Board of County Commissioners for said city and county of Denver, for their approval and for the purpose on the part of the plaintiff of qualifying for said office of Treasurer of the city and county of Denver, and that then and there said Board of County Commissioners approved of said official bond and oath and received and accepted the same, and each of them and placed them in their official files.

That all of the above acts and doings regarding said official bond and oath had and done as aforesaid were performed and done before the demand by plaintiff upon the defendant for a delivery of the possession of the office of Treasurer of the city and county of Denver and its insignia of office as hereinafter more particularly set forth.

That afterwards on the said 10th day of January A. D. 1905 after making said demand on the defendant for the said office plaintiff again presented his said official bond and oath to the Board of Supervisors for the city and county of Denver at a regular session of said Board and then and there requested said Board to approve said bond and receive the same and his said official oath but said Board of Supervisors did then and there without stating any reason therefor refuse to examine into, inspect or consider the sufficiency of said official bond and oath or either of them and peremptorily rejected the same without determining the sufficiency of the same.

9 7. That on said 10th day of January A. D. 1905, plaintiff Charles W. Badgley for the purpose of entering upon the duties of his said office as Treasurer of the said city and county of Denver and for the purpose of taking possession of the said office and of the books, records, papers, documents, monies and other property belonging to said office and under the control of the Treasurer and of performing his duties as said Treasurer, went to the office of Treasurer of said city and county and demanded of said defendant, Charles S. Elder, the possession of said office of Treasurer and of the books, records, papers, documents, monies and other property belonging to said office but the defendant Charles S. Elder, refused to surrender the said office or the said books, records, papers, documents, monies and other property belonging to said office to said plaintiff and ever since has failed, neglected and refused to surrender the same or any part thereof to said plaintiff and still refuses to surrender the same or any part thereof to your plaintiff.

Wherefore, the People of the State of Colorado by the said District Attorney pray the advice of the court in the premises and due process of law against the said Charles S. Elder in this behalf to be made and that he, the said Charles S. Elder, may answer to the People of the State of Colorado by what warrant he claims to hold said office of Treasurer or to exercise the powers and perform the duties and receive the fees and emoluments thereof and that he be ousted and excluded from said office of Treasurer of said city and county of Denver and from further holding and exercising the same and that your plaintiff, Charles W. Badgley, be adjudged entitled to said office of Treasurer and entitled to take upon himself
10 the execution of said office as provided by law and for such other and further relief and judgment as to this Honorable Court may seem right and proper and for costs.

GEORGE STIDGER,
District Attorney.

HENRY J. HERSEY,
H. E. LUTHE,
R. J. BARDWELL,
Of Counsel.

11 STATE OF COLORADO, *City and County of Denver, ss:*

Charles W. Badgley being first duly sworn on oath deposes and says that he is the plaintiff named in the above and foregoing complaint, that he has read the above and foregoing complaint and that the facts therein stated are true to his own knowledge except as to those matters therein stated upon information and belief, and as to those matters he believes it to be true.

CHARLES W. BADGLEY.

Subscribed and sworn to before me this 25th day of February A. D. 1905.

MAUDE A. BENTLEY,
Notary Public.

[NOTARIAL SEAL.]

My commission expires Nov. 1st 1908.

12 (Endorsed:) No. 38351. In the District Court. The People of the State of Colorado on the information of George Stidger the District Attorney of the Second Judicial District of the State of Colorado on the relation of Charles W. Badgley, Plaintiff *vs.* Charles S. Elder, Defendant. Amended complaint. Filed in District Court City and County of Denver, Feb. 27, 1905 Otis B. Spencer, Clerk. George Stidger, Dist. Att'y, H. J. Hersey, H. E. Luthe, R. J. Bardwell, Counsel.

And afterwards, and on, to-wit, the 27th day of February A. D. 1905, came the respondent by his attorneys, Milton Smith and Chas. R. Brock Esqs., and filed herein his Demurrer;

And said Demurrer is in words and figures as follows to-wit:

13 STATE OF COLORADO, *City and County of Denver, ss:*

In the District Court.

No. 38351.

THE PEOPLE *ex Rel.*, &c., Petitioners,
v.
CHARLES S. ELDER, Respondent.

Demurrer.

Comes now the defendant or respondent, in the above entitled action, by his attorneys, Milton Smith and Charles R. Brock, and demurs to the amended complaint of the plaintiffs or petitioners and for cause of demurrer says:

That the said amended complaint does not state facts sufficient to constitute a cause of action.

MILTON SMITH,
CHARLES R. BROCK,
Attorneys for Defendant.

14 (Endorsed:) No. 38351. In the District Court of the City and County of Denver. The People *ex rel.* &c. Plaintiff *vs.* Charles S. Elder, Defendant Demurrer. Filed in District Court City and County of Denver Feb. 27, 1905. Otis B. Spencer, Clerk. Milton Smith, Chas. R. Brock.

15 Be it remembered that heretofore and on to-wit the 27th day of February A. D. 1905, the same being one of the regular juridical days of the January Term A. D. 1905 of said Court, the following proceedings *inter alia* were had and entered of record in said Court to-wit:

No. 38351.

THE PEOPLE OF THE STATE
vs.
CHARLES S. ELDER.

At this day comes the parties hereto by their attorneys respectively, and thereupon the demurrer of defendant to plaintiff's amended complaint is submitted to the Court without argument, and the Court being now sufficiently advised in the premises, doth sustain said demurrer.

(Same Day.)

38351.

THE PEOPLE OF THE STATE
vs.
CHARLES S. ELDER.

At this day comes the said plaintiff by its attorney and saith that it will abide by its complaint herein.

Whereupon, it is ordered by the Court that said defendant go hence hereof, and have and recover of and from the said plaintiff his costs in this behalf laid out and expended to be taxed, and
16 have execution therefor. To which judgment and to the order sustaining the demurrer herein the said plaintiff then and there excepts.

And thereupon and on to-wit the same day, the same being one of the regular juridical days of the January Term A. D. 1905 of said Court, the following proceedings *inter alia* were had and entered of record in the Judgment Book of said Court to-wit:—

38351.

THE PEOPLE OF THE STATE OF COLORADO, on the Information of GEORGE STIDGER, the District Attorney of the Second Judicial District of the State of Colorado, and the Relation of CHARLES W. BADGLEY,

vs.
CHARLES S. ELDER.

Quo Warranto.

The Court having this day ordered that judgment be entered herein in favor of the said respondent Charles S. Elder, on his demurrer to the amended complaint herein, now, therefore,

It is considered by the Court that the said respondent go hence hereof without day and have and recover of and from the said relator Charles W. Badgley, his costs in this behalf laid out and expended to be taxed, and have execution therefor.

17 And thereupon and on to-wit the same day, the following further proceedings *inter alia* were had and entered of record in said Court to-wit:—

38351.

THE PEOPLE OF THE STATE
vs.
CHARLES S. ELDER.

At this day comes the said plaintiff by its attorney and prays an appeal to the Supreme Court of the State of Colorado, which is allowed upon condition that he file herein within five (5) days from this day, his appeal bond in the penal sum of two hundred ($200.00) Dollars with sureties to be approved by the Clerk of this Court.

And time and until thirty (30) days from this day is allowed said defendant within which to prepare and tender to the Judge of this Court, its bill of exceptions by it reserved herein which when signed and sealed by the said Judge shall be filed herein as of this day.

18 And afterwards, and on, to-wit the 4th day of March A. D. 1905, came the petitioner, by his attorneys, and filed herein his Appeal Bond;

And said Bond is in words and figures as follows, to-wit:

Know all men by these presents, that we The People of the State of Colorado and Charles W. Badgley on whose relation the People of the State of Colorado on the information of George Stidger the District Attorney of the Second Judicial District of Colorado so sues as principal and Harry K. Brown, as surety, of the City & County of Denver and State of Colorado, are held and firmly bound unto Charles S. Elder, in the penal sum of Two Hundred Dollars, for the payment of which, well and truly to be made we and each of us bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated at Denver, Colo., this fourth day of March in the year of our Lord one thousand nine hundred and five.

The condition of the above obligation is such, that whereas, the said defendant Charles S. Elder did, on the twenty-seventh day of February one thousand nine hundred and five, at a term of the District Court, then being holden within and for the Second Judicial District in the City and County of Denver and state of Colorado, obtain a judgment against the above bounden plaintiffs that plaintiffs' complaint be dismissed and for the sum of Three Dollars and sixty-five cents, costs of suit, from which judgment the said plaintiffs have prayed for and obtained an appeal to the Supreme Court of said State of Colorado.

19 Now if the said plaintiffs shall duly prosecute said appeal, and shall moreover pay the amount of said judgment, costs interest and damages, rendered and to be rendered against them, the said plaintiffs in case the said judgment shall be affirmed in the said *The said* Supreme Court, then the above obligation to be null and void, otherwise to remain in full force and effect.

CHARLES W. BADGLEY. [SEAL.]
HARRY K. BROWN. [SEAL.]

STATE OF COLORADO, *City and County of Denver, ss:*

Harry K. Brown, the surety whose name is subscribed to the above undertaking, being *severally* duly sworn, *each for himself* says: That he is a resident and freeholder within the said City and County of Denver, and that he is worth the sum specified in the said undertaking as the penalty thereof, over and above his just debts and liabilities, in property not by law exempt from execution in this State.

HARRY K. BROWN.

Subscribed and sworn to before me this 4th day of March A. D. 1905.

[SEAL.] WALTER A. PETERSON,
Notary Public.

(Endorsed:) No. 38351. Appeal bond to Court of Appeals of State of Colorado The People &c on the relation of Charles W. Badgley *vs.* Charles S. Elder. Approved and filed this 4th
20 day of March A. D. 1905. Otis B. Spencer, Clerk By J. S. Brown, Deputy.

21 STATE OF COLORADO, *City and County of Denver, ss:*

I, Otis B. Spencer, Clerk of the District Court in and for the City and County of Denver, State aforesaid, do hereby certify the above and foregoing to be a true, complete and perfect transcript and copy of Amended Petition, Demurrer, Appeal Bond and Orders of Court had and entered of record in a certain cause in said Court lately depending, wherein The People etc *ex rel.* Charles W. Badgley were Petitioners and Charles S. Elder was Respondent, as the same now remain on file and of record in this office.

And I further certify the accompanying Bill of Exceptions to be the original Bill of Exceptions filed in said cause.

Witness my hand and seal of said Court at the Court House in Denver, County and State aforesaid, this 28th day of March A. D. 1905.

[SEAL.] OTIS B. SPENCER, *Clerk,*
By J. F. BROWN, *Deputy.*

22 STATE OF COLORADO, *City and County of Denver, ss:*

In the District Court.

THE PEOPLE OF THE STATE OF COLORADO, on the Information of GEORGE STIDGER, the District Attorney of the Second Judicial District of the State of Colorado, and the Relation of CHARLES W. BADGLEY, Plaintiff,

vs.

CHARLES S. ELDER, Defendant.

Be it remembered, that on the 27th day of February, A. D. 1905, this cause coming on to be heard upon the Demurrer of Defendant

to the Plaintiff's Amended Complaint, the Court found the issues for the Defendant upon said Demurrer and that the Complaint was not sufficient to be answered unto under the law, did then and there enter its judgment against the Plaintiff, that the said Complaint be dismissed, and that the costs of the action be taxed against the Plaintiff. That Plaintiff then and there excepted to the said ruling of the Court and did then and there except to the judgment of this Court dismissing the Complaint.

And the said exception of the Plaintiff to the said ruling not appearing of record in this cause, the same is hereby incorporated into the said records by this Bill of Exceptions,
allowed by the Court, and signed and sealed by the Court this 11th day of March, A. D. 1905, within the time allowed by the order of this Court.

JOHN I. MULLINS, [SEAL.]
Judge.

23 No. 38351. In the District Court. The People of the State of Colorado, on the information of George Stidger, the District Attorney of the Second Judicial District of the State of Colorado and the relation of Charles W. Badgley, Plaintiff, *vs.* Charles S. Elder, Defendant. Bill of Exceptions. Filed in District Court, City and County of Denver, As of Feb. 27, 1905. March 13 1905. Otis B. Spencer, Clerk. Henry Hersey and H. E. Luthe Att'ys for P't'ff.

24 District Court, City and County of Denver, Second Judicial District.

STATE OF COLORADO, *City and County of Denver, ss:*

Pleas in the District Court of the City and County of Denver, State of Colorado, in the First Division thereof, before the Hon. John I. Mullins, one of the Judges of the Second Judicial District of the said State, at a term thereof begun and held at the Court House in Denver, in said County, on the second Tuesday (it being the tenth day) of January A. D. One Thousand Nine Hundred and five.

Present: John I. Mullins, one of the Judges of the District Court. Henry A. Lindsley, Esq., District Attorney of said District. Hamilton Armstrong, Esq., Sheriff of said County. Otis B. Spencer, Esq., Clerk of said Court.

25 STATE OF COLORADO, *City and County of Denver, ss:*

I, Otis B. Spencer, Clerk of the District Court in and for the City and County of Denver, State aforesaid, do hereby certify the *the* attached Supplemental Bill of Exceptions to be the original Supplemental Bill of Exceptions filed in this Court on the 6th day of April, 1905, in the case of the People *ex rel.* Charles W. Badgley *vs.* Charles S. Elder.

Witness my hand and seal of said Court at the Court House in Denver, County and State aforesaid this 7th day of April, A. D. 1905.

OTIS B. SPENCER, *Clerk*.
[SEAL.] By J. F. BROWN, *Deputy*.

26 STATE OF COLORADO, *City and County of Denver, ss:*

In the District Court for said County.

THE PEOPLE OF THE STATE OF COLORADO, on the Information of GEORGE STIDGER, the District Attorney of the Second Judicial District of the State of Colorado, on the Relation of CHARLES W. BADGLEY, Plaintiffs,

vs.

CHARLES S. ELDER, Defendant.

Supplemental Bill of Exceptions.

Be it remembered, that the above entitled cause, having been heard upon the plaintiffs' amended complaint and the defendant's demurrer thereto, and the court having heard arguments of counsel and being sufficiently advised in the premises did on the 27th day of February A. D. 1905 sustain said demurrer and render judgment that plaintiffs' complaint be dismissed and did render and declare the following opinion for its said judgment to which said opinion and judgment the plaintiffs then and there excepted, said opinion being as follows:

27 This is an action by the People on the relation of Charles W. Badgley against Charles S. Elder, for the usurpation of the office of Treasurer of the City and County of Denver. The complaint charges that the defendant "did, on, to-wit, the 10th day of January A. D. 1905, without any warrant or authority of law, usurp and intrude himself into the office of Treasurer of said city and county of Denver, and ever since has continued, and still does continue, to unlawfully usurp and intrude himself into the said office of Treasurer of the said city and county of Denver, and is still usurping and intruding himself into and unlawfully holding and exercising the functions, powers and duties of the Treasurer of the said city and county of Denver."

The relator bases his own claim to the said office upon "a general election under and by virtue of the constitution and statutes of the state of Colorado," held on the 8th day of November A. D. 1904. From the complaint it appears that the relator at said election received a majority of the votes for the office of treasurer of the city and county of Denver, and subsequently a certificate of election was issued to him by the election commission for the city and county of Denver.

On the 10th day of January A. D. 1905, the relator alleges that he demanded possession of the said office, together with the books, and records thereof, from the defendant. This demand was refused.

The complaint further shows the adoption of a charter of the city and county of Denver on the 29th day of March A. D. 1904, and the filing of two copies thereof with the Secretary of State of the State of Colorado.

28 To the complaint the defendant interposed a demurrer upon the ground that the said complaint does not state facts sufficient to constitute a cause of action. The issues of law arising upon said demurrer have been argued and are now before the court for decision.

It will be observed that the charge of usurpation against the defendant is in the language of an ancient form used in *quo warranto* proceedings at common law. It amounts to nothing more than a statement of legal conclusions, and it seems to me is not sufficient under the rules of code pleading.

Attorney-General *v.* Messmore, 14 Wis., 125;
Central & Georgetown Road Co. *v.* People, 5 Colo., 39;
A. T. & S. F. R. R. Co. *v.* People, 5 Colo., 60.

But, treating the allegations as sufficient, when standing alone, to require the defendant to set forth in an answer his own title to said office, yet when the whole complaint is taken into consideration, the conclusion is irresistible that the alleged wrongful usurpation on the part of the defendant consists wholly in the fact that he refused to surrender the office to the plaintiff on January 10th, 1905. The complaint affirmatively shows that the defendant was in the possession of said office, and acting as treasurer, prior to said date.

There is no allegation of fact from which the inference can be drawn that such possession was in anywise illegal.

The defendant's alleged wrongful conduct, therefore, as well as the relator's right, is to be determined solely by the validity of the November, 1904, and May, 1904, elections.

29 Certain reasons were urged by counsel for defendant why the court should take judicial notice of the charter of the city and county of Denver, and of the election held thereunder, in the month of May last. Counsel for plaintiff, however, frankly confessed at the argument that it was their purpose to bring before the court said charter for consideration, and the case was argued upon this theory. It is, therefore, unnecessary to consider or pass upon the question as to whether the court will take judicial notice of said charter. Its enactment is sufficiently charged in the complaint to bring it before the court, even though judicial notice thereof could not be taken in the absence of a pleading on that question. The court does judicially know the officers of the subdivision of the state within its jurisdiction. The court knows, therefore, that the defendant, who was elected treasurer of the city and county of Denver in May last for a term of four years, as by the charter provided, is lawfully in possession of said office, if said May election was a legal one.

The issue raised thus involves a determination of the question as to whether an election for officers to perform governmental functions within the city and county of Denver are to be elected under a charter of the city and county of Denver, or under the general statutes of the state of Colorado. If officers to perform such duties may be

elected under the charter, then such officers could not be legally elected under the general statutes of the State. There is no allegation that the November, 1904, election was held under the charter. On the contrary, it is affirmatively alleged that it was held under the constitution and general laws of the State. The court
30 knows from the provisions of the charter pleaded in the complaint that the election of officers to perform the duties required of county officers in the city and county of Denver must be held in the month of May and not otherwise. Such an election was held. The defendant was elected to the office of treasurer of the city and county of Denver. Was his election legal? The answer to this question will determine the whole controversy, because if the election in May was legal, it follows that the election of the relator in November was absolutely void.

An answer to the question above propounded involves a consideration of certain provisions of Article XX of the State constitution. It was to the construction especially of sections 2 and 3 thereof that the argument on the demurrer was mainly directed. Section 2 of Article XX is as follows:

"The officers of the City and County of Denver shall be such as by appointment or election may be provided for by the charter, and the jurisdiction, term of office, duties and qualifications of all such officers shall be such as in the charter may be provided; but every charter shall designate the officers who shall respectively perform the acts and duties required of county officers to be done by the constitution or the general laws, as far as applicable. If any officer of said city and county of Denver shall receive any compensation whatever, he or she shall receive the same as a stated salary, the amount of which shall be fixed by the charter, and paid out of the treasury of the city and county of Denver in equal monthly payments."

Section 3 of Article XX provides for the transfer of government from the old county of Arapahoe and the old city of Denver and other municipalities included within the boundary constituting the city and county of Denver into a new entity created by the constitution and called the city and county of Denver. It brought to an end the terms of all officers of the old County of Arapahoe and of the City of Denver, and of all included municipalities, but
31 further provided that the mayor, auditor, engineer, city council, police magistrate and chief of police and boards of the city of Denver should become respectively said officers of the said city and county of Denver, and declared that the said engineer should be *ex officio* surveyor and the Chief of Police *ex officio* Sheriff of the city and county of Denver, the Clerk and Recorder *ex officio* Clerk and Recorder, that the Treasurer, Assessor and Coroner of the County of Arapahoe and justices of the peace and constables, holding office within the city of Denver, should become respectively such officers of the city and county of Denver; but it was expressly provided that said officers should hold said offices as specified only until their successors should be duly elected and qualified as therein provided.

Section 2 of Article XX above quoted, sets forth the method by which their successors are to be elected; that is to say, their successors shall be appointed or elected, as may be provided for by the charter.

Section 4 of Article XX provides the method of adopting a charter for the city and county of Denver, and the complaint shows that in pursuance of Article XX a charter was adopted, as above stated

It was urged at the argument in behalf of relator, that notwithstanding the language of section 2 of Article XX, there was no power in the city and county of Denver to provide in its charter a time for the election of those officers who are to perform the acts and duties required of county officers, and that the delegation of such power to the city and county would render Article XX of itself invalid.

32 A sufficient answer to this is found in the fact that the Supreme Court in People *vs.* Sours, 31 Colo., 369, notwithstanding the objection then urged as it is now urged, held article XX to be valid. Its validity was recognized in Montclair *v.* Thomas, 31 Colo., 327, and in People *v.* Adams, 31 Colo., 476. In the latter case, the opinion was written by Chief Justice Campbell, who had dissented from the opinion of the majority of the court in the Sours case *supra*, and at page 480 he uses the following language:

"The fact that the writer of this opinion believed it (referring to Article XX) inoperative and void, when its validity was directly attacked, should not, and does not, lead him to nullify its provisions by hostile construction, nor does it comport with judicial propriety stubbornly to persist in further dissent from a decision acquiesced in by all departments of government. Rather is it the duty of every member of the court to give effect to the article in accordance with the intent of its framers as far as it can be done consistent with the language in which that intent has been manifested."

Article XX, therefore, is as much a part of the Constitution of this state as any other provision in the Constitution. Its validity is not now a debatable question. It is a part of the organic law of the state. The Courts are bound by its provisions, and where the language is plain and unambiguous, it must be treated as meaning exactly what it says, without interpolations or modification.

The language of section 2 is clear and unambiguous. It needs no explanation or interpretation. It says in substance that the officers of the city and county of Denver may be elected or appointed, as may be provided for in the charter. Their jurisdiction, term, duties and qualifications are to be fixed by the charter. With respect to these questions a decision rests absolutely in the discretion of the people of the city and county of Denver. The only limitation placed upon the power of the people of the city and county

33 is that by mandatory declaration they are required in their charter to designate the officers who shall respectively perform the acts and duties required of county officers to be done by the constitution or by the general law, as far as applicable. The people of the state of Colorado recognize that there would be governmental functions and duties to perform within the territory, which would

not be subject to local control; but they delegated to the people of the city and county of Denver the power to designate the functionary agent or official who should perform such governmental duties.

Where the language is plain and unambiguous, as is that contained in Section 2 of Article XX, the words of the Supreme Court of the United States in Lake County *vs.* Rawlins, 130 U. S. 662, are a complete answer to any argument in favor of interpolation:

"We are unable to adopt the constructive interpolations ingeniously offered by counsel for defendant in error. Why not assume that the framers of the constitution and the people who voted it into existence meant exactly what it says? At the first glance its reading produces no impression of doubt as to the meaning. It seems all sufficiently plain; and in such case there is a well settled rule which we must observe. The object of construction, applied to a constitution, is to give effect to the intent of its framers and the people adopting it. This intent is to be found in the instrument itself, and when the text of a constitutional provision is not ambiguous, the courts in giving construction thereto are not at liberty to search for its meaning beyond the instrument."

34 The people have the power, unless their action should be so arbitrary as to destroy a republican form of government to yield up to the people of a given territory the power of local self-government, and certainly there is nothing revolutionary in delegating to the people of a given territory by constitutional amendment the right to select their own officers, especially when the restriction is added as it is in Article XX, that they shall always designate from among the officers so selected those who shall perform the acts and duties required of county officers to be done by the constitution or by the general law of the state.

Martin *vs.* Commissioners, 58 Pac., 934.
Crowley *vs.* Freud, 64 Pac., 698.

I am of the opinion, therefore, that section 2 of Article XX is a complete and absolute delegation of power to the people of the city and county of Denver themselves to determine by a charter what offices shall exist within said territory, what duties shall attach, what qualifications the officers shall have, when the term shall begin, when it shall end, and to elect all of said officers or appoint them, just at such time as the charter itself shall designate, and that annexed to the powers thus delegated there is but one limitation or restriction, and that is, that the charter shall always designate from among its officers those who shall respectively perform the acts and duties required by the constitution and the general law of county officers.

The charter did designate from among the officers provided for by it those who should respectively perform the acts and duties required of county officers under the constitution and general laws of the state. It imposed upon the treasurer of the city and county of Denver the obligation of performing the acts and duties so

35 required of treasurers. By the charter this particular official upon whom the duties resting generally upon treasurers

is imposed, is denominated a treasurer of the city and county, but such official might have been designated by any other name. It is immaterial as to what name he shall have, or when or how he shall be elected. The only requirement in the constitution is, that some one shall be designated to perform the duties imposed upon treasurers, as that word is generally understood, by the constitution and general laws of the state. The fact that the charter designated this particular officer as a treasurer, did not make him a treasurer as that word is understood in other subdivisions of the state. His office is a creature of the charter and not of the constitution. It follows that the election of a treasurer of the city and county of Denver in May, 1904, was valid, and that the alleged election of relator in November, 1904, was absolutely void—void because under the constitution a city and county officer, whatever his name may be, can only be elected under the charter and at the time provided therein, and cannot be elected under the general law.

But aside from these conclusions there is another reason equally potent in leading the court to hold that the charter of the city and county of Denver adopted March 29, 1904, is valid, although it had not been urged by counsel, and that is, the inevitable confusion that is certain to follow should a *Nisi Prius* court under the conditions and circumstances of this case hold the charter or parts of it invalid. Even if there should be doubts of its validity, and I am convinced there are none, these doubts should be resolved in favor of its legality. As Justice Campbell said in the case hereinbefore referred to,
36 "it is the duty of the courts to give effect to the article." One can scarcely conceive the results that are sure to follow should the propositions advanced by the relator be adopted by the lower courts. The attack on the charter is no more nor less than an attack on the Twentieth amendment to the constitution. The same arguments are urged in the one case as in the other. The Supreme Court of this state has declared that the Twentieth amendment is constitutional, and it is not within the province of this court to hold to the contrary. Yet, if we adopt the theory of the petitioner it would precisely amount to over-ruling a higher tribunal. The main purpose of the XX amendment was to secure home rule for Denver. After a great deal of litigation, confusion and expense a charter has been finally adopted and practically acquiesced in by the people and all departments of our government, and it is not the duty of the courts to strain construction of constitutions or laws to defeat the will of the people. It is their duty rather to see that the mandate of the people, especially when it is promulgated in the constitution of the State, is carried out. I see no reason therefore that in anywise suggests that the charter is not clearly within the provisions of the XX amendment, and as the XX amendment has been passed upon by our Supreme Court it is not within the province of this court to change or modify that construction. Nor for the sake of the experiment would I care to assume the responsibility of throwing the city and county government into chaos by holding the constitution unconstitutional.

The demurrer will, therefore, be sustained.

37 And said opinion and exceptions not being a part of the record of this Court in said cause the same is hereby incorporated into the record in said cause by this bill of exceptions this 6th day of April A. D. 1905, being one of the regular days of the January term of this court A. D. 1905 and within the time allowed by law.

Signed and sealed by the Court this 6th day of April A. D. 1905.

JOHN I. MULLINS, *Judge*. [SEAL.]

38 No. 38351. The People &c on the relation of Charles W. Badgley, P'l'ff, *vs.* Charles S. Elder, Def't. Supplemental Bill of Exceptions. Filed in District Court, City and County of Denver, Apr. 6, 1905. Otis B. Spencer, Clerk. George Stidger, District Att'y. Henry J. Hersey, H. E. Luthe, of Counsel for Plaintiff.

39 No. —.

In the Supreme Court of the State of Colorado.

THE PEOPLE OF THE STATE OF COLORADO, on the Information of GEORGE STIDGER, the District Attorney of the Second Judicial District of the State of Colorado, and the Relation of CHARLES W. BADGLEY, Appellant,

vs.

CHARLES S. ELDER, Appellee.

Assignment of Error.

Now comes the plaintiffs in error, the People of the State of Colorado, and respectfully represent and show to the Court that in the record and proceedings in the Court below there was manifest and material error to the injury of the said plaintiffs in error in this to-wit:

First. The Court erred in sustaining the demurrer of the defendant in error to the amended complaint of plaintiffs in error.

Second. The Court erred in dismissing said cause.

Third. The Court erred in giving judgment against said plaintiffs in error and in favor of said defendant in error.

Fourth. That the judgment of the Court below is contrary to the law.

Wherefore and for the said errors and for the manifold other errors in the record and proceedings aforesaid plaintiffs in error pray that the said judgment against them be set aside and for naught held and that said cause be remanded to the court below with

40 instructions to reinstate said cause and to make and enter an order over-ruling said demurrer of said defendant in error and that said defendant in error be required to answer said complaint and that plaintiffs in error recover their costs.

GEORGE STIDGER,
District Attorney for the Second District of the State of Colorado.

H. E. LUTHE,
HENRY HERSEY,
Of Counsel for Plaintiffs.

41 And afterwards and on to-wit: the 23rd day of June A. D. 1905, the following proceedings were had and entered of record to-wit:

No. 5622.

THE PEOPLE OF THE STATE OF COLORADO on the Information of GEORGE STIDGER, the District Attorney of the Second Judicial District of the State of Colorado, on the Relation of CHARLES W. BADGLEY, Appellants,

vs.

CHARLES S. ELDER, Appellee.

At this day this cause coming on to be heard, as well upon the transcript of proceedings and judgment had in said District Court in and for the city and county of Denver, as also upon the matters assigned for error herein; and the same having been heretofore argued by counsel and submitted to the consideration and judgment of the Court, and it appearing to the Court that there is manifest error in the proceedings and judgment aforesaid of said District Court. It is therefore considered and adjudged by the court that the judgment aforesaid of said District Court be, and the same is hereby reversed, annulled, and altogether held for naught; and that this cause be remanded to said District Court with directions to overrule the demurrer to the amended complaint and enter judgment in favor of plaintiff and against defendant as prayed for in such amended complaint.

42 It is further considered and adjudged by the court, that said appellants do have and recover of and from said appellee their costs in this behalf expended, to be taxed, and that they have execution therefor, and let the opinion of the court filed herein be recorded.

43 And afterwards and on to-wit: the 10th day of July the following further proceedings were had and entered of record, to-wit:

No. 5622.

THE PEOPLE OF THE STATE OF COLORADO *ex Rel.* CHARLES W. BADGLEY and CHARLES W. BADGLEY, Appellants,

vs.

CHARLES S. ELDER, Appellee.

Appeal from District Court of the City and County of Denver.

This cause now coming on to be heard, upon the petition for a rehearing herein, and upon consideration thereof, and the Court being now fully advised in the premises: It is considered and adjudged by the Court that the said petition be, and the same is hereby denied and that the judgment heretofore and on to-wit, June 23rd entered herein, be, and the same is hereby modified and judgment

ordered entered in this Court; It is therefore considered and adjudged by the Court that the judgment of the District Court of the said City and County of Denver be, and the same is hereby reversed, annulled and altogether held for naught, and the Court doth further Order, Adjudge and Decree that the said relator and plaintiff, appellant herein, Charles W. Badgley, is the lawfully elected and duly qualified Treasurer of the City and County of Denver, of the State of Colorado, and is entitled to hold and exercise said office and to perform the duties thereof and to receive the emoluments
44 thereof and that the defendant Charles S. Elder is guilty of usurping, intruding into and holding, exercising and executing the said office of Treasurer and performing the duties thereof and receiving the emoluments thereof, and it is further ordered, adjudged and decreed that the said defendant Charles S. Elder, appellee herein, be and he is hereby excluded from the said office of Treasurer of the said City and County of Denver and from exercising any of the duties pertaining thereto and receiving the emoluments thereof and that he the said defendant Charles S. Elder do forthwith yield and deliver up to the said plaintiff and relator, appellant herein, Charles W. Badgley, the said office of Treasurer of said City and County of Denver, and all the books, papers, keys, furniture, property, rooms, documents, moneys, and records belonging to or pertaining to said office or the business thereof, and all and every thing or things of whatsoever name or nature which may belong to said office or the business thereof.

It is further ordered and adjudged by the court that the said appellant do have and recover from said appellee his costs in this behalf expended to be taxed and that execution issue therefor.

And let the opinion of the court filed herein be recorded.

Justices Steele and Gunter dissenting.

45 And afterwards, and on, to-wit: September 15th, A. D. 1905, there was filed in our said court, in the office of the clerk thereof, a petition for a writ of error to our said court from the supreme court of the United States, an assignment of errors, an order allowing said writ of error, a writ of error issued in pursuance thereof, a citation thereon, and a bond; and on said 15th day of September, A. D. 1905, there was lodged in the office of the clerk of the supreme court of the state of Colorado for the adverse parties, three copies of said original writ of error.

46 UNITED STATES OF AMERICA,
District of Colorado, State of Colorado, ss:

I, Horace G. Clark, clerk of the supreme court of the state of Colorado, in the United States of America, do hereby certify the above and foregoing to be a true and complete and perfect transcript and copy of the record and proceedings had in the case of The People, etc., appellant, *v.* Charles S. Elder, appellee, No. 5622, as the same remains of record on file in my office; and I herewith annex to and transmit with the record a copy of the opinion of the supreme court of the state of Colorado filed herein in this cause, and also

a copy of the opinion of the supreme court of the state of Colorado in cause No. 4850, entitled, The People, etc., *v.* Henry V. Johnson, to which reference is made in the opinion in this cause; and I also annex hereto and transmit herewith the assignment of errors which accompanied the petition of Charles S. Elder for a writ of error to the supreme court of the state of Colorado from the supreme court of the United States, the order allowing said writ of error, *the writ of error,* the citation, and the bond executed and approved upon the allowance and issuing of said writ of error.

In witness whereof, I have caused the seal of the said court to be hereunto affixed at the city of Denver, in the district and state of Colorado, this 29th day of September, in the year of our Lord one thousand nine hundred and five, and of the Independence of the United States the one hundred and twenty-ninth.

[Seal Supreme Court of the State of Colorado.]

HORACE G. CLARK,
Clerk of the Supreme Court of the State of Colorado.

47 No. 5622.

THE PEOPLE OF THE STATE OF COLORADO on the Information of GEORGE STIDGER, the District Attorney of the Second Judicial District of the State of Colorado, on the Relation of CHARLES W. BADGLEY, Appellant,

vs.

CHARLES S. ELDER, Appellee.

Appeal from the District Court of the City and County of Denver.

Mr. Justice MAXWELL delivered the Opinion of the Court:

This action relates to the office of county treasurer of the city and county of Denver.

The facts so far as they relate to the office of county treasurer are substantially the same as those set forth in People *ex rel.* etc. *v.* Alexander, No. 4976.

48 The judgment of the court below was one of dismissal against the appellant, from which is this appeal.

For the reasons stated in People *ex rel.* etc. *vs.* Johnson No. 4850, the judgment of the court below will be reversed, set aside and for naught held, and judgment rendered and entered in this court in favor of appellant, Charles W. Badgley and against appellee, Charles S. Elder, as prayed in the amended complaint, and that appellant have judgment for costs.

Judgment Accordingly.

Decision En Banc.

Justices Steele and Gunter Dissenting.

49 No. 4850.

THE PEOPLE OF THE STATE OF COLORADO on the Relation of N. C. MILLER, the Attorney General of the State of Colorado, Petitioner,

vs.

HENRY V. JOHNSON, Respondent.

Original Proceeding in Quo Warranto.

Mr. Justice MAXWELL delivered the opinion of the Court:

This information in *quo warranto*, filed by leave of court, by the people of the state of Colorado on the relation of N. C. Miller, the attorney-general of the state charged, that one Henry V. Johnson, a citizen of said state and a resident and qualified elector of the city and county of Denver therein, did on to-wit the 1st day of
50 June 1904, without any warrant or authority of law usurp and intrude himself into the office of county judge of the city and county of Denver and ever since has continued and still does continue to unlawfully usurp and intrude himself into said office of county judge of the city and county of Denver; that he the said Henry V. Johnson is now unlawfully holding a regular term of the county court of said city and county of Denver, and is still usurping and intruding into and unlawfully holding and exercising the functions of judge of the county court in said city and county of Denver, and called upon to answer by what warrant he claims to hold such office or exercise the powers, perform the duties and receive the fees and emoluments thereof, and that he be ousted and excluded therefrom.

In response to a rule to show cause, duly served, respondent filed his answer and return, wherefrom it appears, in substance, that he is a duly qualified elector in and for the city and county of Denver, and in every way qualified to hold the office of county judge of said city and county; that under and by virtue of Article XX of the constitution of the state of Colorado, pursuant to an election ordered by ordinance of the city council of Denver, a special election was held at which members of a charter convention were elected, which charter convention framed a charter for the city and county of Denver in harmony with said Article XX of the constitution; that on the 29th of March 1904, said charter so framed by said charter convention was submitted to the qualified electors of the city and county of Denver, and by such qualified electors was approved, and became and was and is the charter of said city and
51 county of Denver; that in and by said charter it was provided that the county court of the city and county of Denver should consist of two judges; that at the next city and county election two judges should be elected, one of whom should be for the short term; that the judge elected for the short term should within thirty days after his election, qualify and enter upon the duties of his office and should hold such office until the second Monday of January 1907; that the judge elected for the long term should enter upon the duties of his office on the second Tuesday of January 1905, and

hold office for a term of four years; that the judges of the county court should be elected, one every two years, each for a term of four years; that such judges should be elected at the same time and manner as other officers of the city and county of Denver, at the general city and county election next preceding the expiration of their respective terms of office; that in case of vacancy occurring from any cause, the mayor by and with the consent of the board of supervisors should appoint a person possessing the qualifications herein provided for county judges, to act as such judge until his successor is duly elected and qualified; that said charter provided that a general city and county election should be held on the third Tuesday in May, being the 17th of May, 1904, and every two years thereafter; that at the first city and county election there should be elected a mayor, auditor, assessor, treasurer, clerk, recorder, coroner, county superintendent of schools, two judges of the county court, 16 aldermen, 7 supervisors, 3 justices of the peace, 3 constables; that the terms of all elective officers shall commence on the first secular day of June following their election, and shall be four years and until
52 their successors are elected and qualified; that at the election held May 17, 1904, respondent was elected to the office of county judge, and within thirty days after such election, qualified and entered upon the duties of said office of county judge, and is now holding said office and discharging the duties thereof, pursuant to such election; denies that he did usurp and intrude himself into the office of county judge of the city and county of Denver and avers that he holds the same and discharges the duties of said office under full warrant and authority of law, and by virtue of his election as hereinbefore stated.

To this answer and return, the people filed a general demurrer, whereby the constitutionality of the charter provisions, relied upon by the respondent, is brought directly in issue.

This is one of eight cases, now pending in this court of like character, involving the title to the following county offices in the city and county of Denver, to-wit: county judge, county assessor, county clerk and *ex officio* recorder, treasurer, constables, sheriff, county commissioners and justices of the peace.

All of these cases were argued orally and submitted at the same time, and all involve substantially the same questions, except that this case involves the further question, whether the charter convention was authorized to increase the number of county judges to two.

In the consideration which the court has given these cases, all of the briefs and arguments filed by counsel, in all of the cases, and all authorities cited have been thoroughly and exhaustively considered by the court.

53 Respondents in these cases are represented by an array of eminent counsel all of whom have filed elaborate, exhaustive and learned briefs and arguments, covering every conceivable phase of every question which might be presented to the consideration of the court. In a multitude of counsel there is wisdom, and necessarily a difference of opinion upon matters under consideration. If it should transpire that this opinion attempts to set forth the views

of counsel as presented in the briefs and arguments filed, as we understand them, which do not coincide with the views of counsel reading the opinion, let not the opinion be criticised upon this account alone until at least the reader has carefully read and analysed the 1500 pages of briefs and arguments filed.

It is the contention of the relator, that the charter convention of the city and county of Denver provided for by Article XX can not legislate in any particular as to the county court, or the county judge or any other office, officer or matter, not of purely local or municipal concern; that the constitution provides for one county judge in each county of the state and requires that all laws relating to courts shall be general and of uniform operation throughout the state, and that the organization, jurisdiction, powers, proceedings and practice of all the courts of the same class or grade, so far as regulated by law, shall be uniform (Constitution § 22, 28 Art. VI); that the charter provisions assuming to increase the number of county judges of the city and county of Denver, to change the time of election of the county judge and time of the beginning and ending of his term, and to legislate in any particular as to the county judge of the county court are unconstitutional and void;
54 that there is nothing in Article XX of the constitution which shows an intention to change the scheme of government in this particular, and if there were, it would be unconstitutional; and that there is nothing in Article XX which shows any intention to grant any power to the charter convention to supersede the provisions of the constitution or general statutes, relating to the county or the state government, and, therefore, if the charter convention has legislated or attempted to legislate upon any matter, which supersedes the provisions of the constitution or general statutes, such legislation is unconstitutional and void.

In our opinion the contention of relator is fully sustained by the majority opinion of the court in People *v.* Sours, 31 Colo., 369, and in the opinion of the present Chief Justice specially concurring.

At page 385 Mr. Justice Steele in delivering the majority opinion says:

"Counsel say: 'Had it been the intention that the constitution and laws should be in force in this territory, this instrument would have so stated. The language of the above provisions is plain and unambiguous. It has been said that in construing a constitutional provision it will be presumed that every word was weighed and its meaning carefully considered before its insertion in the instrument; and this instrument says that the city and county of Denver can adopt any measure and shall always have the exclusive power to make, alter and revise their charter. That means everything. If not, why not? This charter is to be the organic law. A legislative act is now the charter of the city of Denver, and the constitution of this state and the laws thereof constitute the organic law of this county. But this instrument changes all this, and says that the charter as framed by the charter convention shall not only be the charter of the city and county but shall be the organic law thereof.

That language means something. It displaces and was intended to displace the constitution, the laws and the general assembly.'

If this amendment must be given that construction, it can not be sustained. Even by constitutional amendment, the people
55 cannot set apart any portion of the State in such manner that that portion of the state shall be freed from the constitution, or delegate the making of constitutional amendments concerning it to a charter convention, or give to such charter convention the power to prescribe the jurisdiction and duties of public officers with respect to state government as distinguished from municipal, or city, government. The duties of judges of the district court, county judges district attorneys, justices of the peace, and, generally, of county officers, are mainly governmental; and so far as they are governmental they may not be controlled by other than state agencies without undermining the very foundation of our government. Under the constitution of the United States, the state government must be preserved throughout the entire state; and it can be so preserved only by having within every political subdivision of the state, such officers as may be necessary, to perform the duties assumed by the state government, under the general laws as they now exist or as they may hereafter exist.

This distinction between the governmental duties of public officers and their municipal duties is fundamental, and therefore is not avoided or affected by the consolidation.

'Counties, townships, school districts and road districts do not usually possess corporate powers under special charters; but they exist under general laws of the state which apportion the territory of the state into political divisions for convenience of government and require of the people residing within those divisions the performance of certain public duties as a part of the machinery of the state; and in order that they may be able to perform those duties, vest them with certain corporate powers. Whether they shall assume those duties or exercise those powers, the people of the political divisions are not allowed the privilege of choice; the legislature assumes this division of the state to be essential in republican government and the duties are imposed as a part of the proper and necessary burden which the citizens must bear in maintaining and perpetuating constitutional liberty.'—Cooley's Constitutional Limitations 240.*

'*A municipal corporation proper* is created mainly for the interest, advantage and convenience of the locality and its people; a county organization is created almost exclusively with a view to the policy of the state at large, for the purposes of political organization and civil administration, in matters of finance, of education, of provision for the poor, of military organization, of the means of travel and transport, and especially for the general administration of justice. With scarcely an exception all the powers and functions of the county organization have a direct and exclusive reference to the general policy of the state and are in fact, but a branch of the general administration of that policy.—1 Dillon's Municipal Corporations § 23.'

The respondent's construction, however, is not that placed upon the amendment by the counsel for the petitioners, or, we assume, by the people. The provision that 'Every charter shall designate the officers who shall respectively, perform the acts and duties required of county officers to be done by the constitution or by the general law, as far as applicable,' completely contradicts the assumption that the amendment regards such duties as being subject to local regulation and control. The amendment is to be
56 considered as a whole in view of its expressed purpose of securing to the people of Denver absolute freedom from legislative interference in matters of local concern; and, so considered, and interpreted, we find nothing in it subversive of the state government, or repugnant to the constitution of the United States."

At page 410 Mr. Justice Gabbert says:

"* * * the whole scope and purpose of the amendment was to provide home rule for certain cities with respect to certain governmental matters local in their nature. This is apparent from the contents of the amendment itself, as well as the provisions designating what should appear upon the official ballot in order to enable the electors to vote for or against its adoption. Its several provisions all relate to this one general object, and are designed to accomplish this one purpose, in so far as they relate to cities designated in the amendment either by name or class."

And in this connection, the following language of Justice Gabbert is significant, (page 411): "What particular subjects, however, relating to governmental affairs are embraced in the amendment is a matter for the convention assembled to form a charter to most carefully consider. It should also be borne in mind that there may be provisions of the constitution other than Article XX which must be observed in the creation of a charter."

The foregoing construction of Article XX was interpreted and approved by the unanimous opinion of this court in Parsons *v.* People 76 Pac., 672, 32 Colo. where Mr. Chief Justice Campbell said:

"Neither is this revenue act of 1902 in violation of any provision of article XX. In the majority opinion of this court, in People *v.* Sours, 31 Colo., 369, 74 Pac., 167, it was clearly indicated that the general scheme of government therein contemplated is restricted to that of the municipality proper, and does not intrench upon county or state government. It does not purport to nullify the constitution or general laws of the state in so far as they pertain to county or state government or attempt to interfere with the power of the state in raising state revenue."

The above quoted language from the majority opinion in the Sours case was used in disposing of the "second objection" urged by counsel for respondent, in their argument that article XX was inoperative and void. This objection as stated on page 383 of the opinion is as follows:

57 "2. It violates the provision of section 4 of the enabling act providing that the constitution shall be republican in form * * * and not be repugnant to the constitution of the

United States and the principles of the Declaration of Independence."

The "above provisions" referred to in the opinion, as stated by counsel are:

"SEC. 2. The officers of the city and county of Denver shall be such as by appointment or election may be provided for by the charter; and the jurisdiction, term of office, duties and qualifications of all such officers shall be such as in the charter may be provided."

"SEC. 4. The people of the city and county of Denver are hereby vested with and they shall always have the exclusive power in the making, revising or amending their charter."

And further on: "Whereupon it shall become the charter of the city and county of Denver and shall become the organic law thereof."

"SEC. 5. The citizens of the city and county of Denver shall have the exclusive power to amend their charter or to adopt a new charter, or to adopt any measure as herein provided."

Thus it is seen, the precise question here involved was ruled by the majority opinion in the Sours case.

We might, without further discussion, conclude this opinion at this point, basing our conclusions upon the ground, that the question here presented, under the authorities above cited, is not an open one, but is and must be held to be *stare decisis*.

The ability, learning and force with which counsel, representing respondents, present their views, lead us to state their position, the argument in support thereof, and to point out what we deem to be the fal-acy of both position and argument.

In the first place, counsel concede that the county judge and other county officers down to and including constable, are state
58 officers, in that they derive their existence and powers from the constitution and general laws and perform state and governmental functions.

The position taken by respondent is, the charter having designated "the officers who shall respectively perform the acts and duties required of county officers to be done by the constitution or by general law" notwithstanding the fact that the county judge and other county officers are constitutional officers performing state and governmental functions, and notwithstanding the fact that the powers, jurisdiction and procedure of the county court are prescribed by the constitution and general laws beyond the interference of the charter, the *agencies* for the performance, of such acts and duties having been designated by the charter, the constitution is complied with and a republican form of government preserved.

In other words, so long as the charter designates some one who shall perform the acts and duties of county judge and other county officers, respondent contends, that the charter convention can do what it pleases, with the county court and other county officers. It may abolish them, it may increase the number of incumbents, it may increase the term of office indefinitely, it may change the time of election or abolish elections entirely, making the office appointive, it may vest the appointing power in one man or any number of men, or it may qualify and designate one man to perform the acts and duties of all county officers.

Referring now to the construction placed by this court on article XX the learned Justice who wrote the majority opinion in the Sours case used this language:

59 "If this amendment must be given *that construction,* it can not be sustained."

What construction? Unquestionably the construction contended for by counsel who were seeking to establish the invalidity of the amendment, the construction stated in the quotation immediately preceeding and which called forth, the declaration above quoted. The construction contended for here. A construction which as expressed by counsel for respondent herein, would: "Cut loose the city and county of Denver from any and all constitutional limitations and restrictions, and make the voice of the people, whether deliberately or hysterically expressed, the law in that locality."

In the Sours case, the court repudiated such construction and upheld the validity of the amendment saying: "The amendment is to be considered as a whole in view of its expressed purpose of securing to the people of Denver absolute freedom from legislative interference in matters of *local concern;* and, so considered and interpreted, we find nothing in it subversive of the state government or repugnant to the construction of the United States."

If the majority of the court, in the Sours case had been of the opinion that Article XX had for its purpose the securing to the people of Denver absolute freedom from legislative interference *in all matters,* relating to county and state governmental offices, officers and functions, the inevitable conclusion would have followed, that the amendment would have been held subversive of a republican form of government and repugnant to the constitution of the United States.

The charter adopted March 29th 1904, increases the number of county judges to two, changes the time of election, changes the time when the term of office shall begin, provides that the qualifications of county judges shall be the same as district judges; that in

60 case of vacancy the mayor, with the consent of the board of supervisors, shall appoint; changes the salary and manner of payment; and in addition to the above confers upon the county court jurisdiction in some matters, unnecessary to consider, all of which provisions are contrary to Article VI of the constitution as amended.

The same rule of construction applied by this court to Article XX must be applied to the charter framed under that Article.

This court having held that Article XX could not be sustained, if it purported to cut loose the city and county of Denver from any and all constitutional or legislative limitations and restrictions, it must follow, that a charter framed thereunder, in so far as it purports to accomplish the same thing can not be maintained. Again, referring to the majority opinion in the Sours case:

"Even by constitutional amendment the people cannot set apart any portion of the state in such manner that that portion of the state shall be freed from the constitution."

In what respect "freed from the constitution?" To what extent

"freed from the constitution?" May the people of any portion of the state be freed from any article or any section of any article of the constitution? If yea, where and when must the freeing process cease?

In Ames *v.* People 26 Colo., 83-109, this court has said:

"The test of the constitutionality of a statute is not what has been done but what by its authority may be done."

To concede that Article XX authorizes a charter convention to legislate upon *any subject whatever,* in controvention of *any* of the provisions of the constitution relative to governmental or state matters, or to county or state offices and officers, is to concede
61 that such convention might displace the constitution in every respect, and the charter, being the organic law of the city and county, would thereby become supreme within the territory included in the boundaries of the city and county; hence, we would have a portion of the state freed from the constitution; over which the state had no right to legislate; which could have no interest whatever in any legislation which might be enacted by the state, relating to state and governmental affairs. In short, an *imperium in imperio,* a condition which cannot be brought about or exist, even by constitutional amendment, as emphatically decided by the majority opinion in the Sours case.

This is not a question of whether a *mere change* in the *term* of office and *time* of election of an officer performing governmental duties is an act subversive of a republican form of government; the question is, can the people of the state, by constitutional amendment set apart any portion of the state and vest the citizens thereof with power to legislate upon matters other then those purely local and strictly municipal in their character.

In the Sours case this Court has said that this could not be done, for the reason, that such act would be subversive of a republican form of government, repugnant to the constitution of the United States, and violative of the compact existing between the state and federal government.

If such plenary power to legislate cannot be granted, a single act of legislation, would be invalid, even though it be legislation changing the term of office, and the time of election of county officers, performing state and governmental functions.

To concede the right to legislate upon such matters in the slightest particular must be to concede the right to legislate
62 on all matters, and we would have a community of citizens, representing one-third the population of the state, legislating for themselves upon all matters, and not subject to the general legislation of the state.

Such a condition is the logical result of permitting the first act of inhibited legislation.

If the people of Denver by Article XX are authorized, through a charter convention to change the term of office, time of election and number of incumbents of one state or county governmental office, they are authorized to change all of them, and in any respect they may see fit. The tenure of office might be made for life with power

to name a successor, in which even there would be no election; ten county judges instead of one might be appointed, or the office might be abolished, and the mayor, the sheriff or any other officer designated to perform the duties of county judge or one person might be designated to perform all the duties of all county officers.

Confining the powers of the charter convention to legislate upon matters purely local and municipal in character, as was done by the Court in the Sours case, avoids the contingency above outlined.

In a case pending in this Court, in which respondent herein is named as respondent, wherein was involved the right of the county court of the city and county of Denver, to hear an election contest of the office of mayor, counsel appearing for respondent here, appear therein in the same capacity, and have filed a brief, portions of which are instructive and interesting as to the views of counsel at the time that brief was prepared.

63 "And in the exercise of such special powers as were conferred upon the body politic therein contemplated and mentioned, it was clearly the intent of the article (20) that the general laws and constitution of the state were to be followed. The mere grant of a special power does not carry with it any authority to exercise it in a manner not contemplated by law. The affairs of the City of Denver had for years been a favorite subject of legislation by the general assembly of the state. The people of Denver were governed by the state even in matters peculiarly of local concern and pertaining to the conduct of the municipality. In such affairs, the legislature was the continuous and sole arbiter of our municipal fortunes, and to remedy this evil, the article in question was submitted and adopted. When its purpose is considered, it will be found helpful in ascertaining the extent to which the article was carried. *Home rule had a well defined meaning. It meant that as to all the affairs of the City and County of Denver, which affected the relations of the citizens with their local government, they should be freed from State interference, regulation or control; that the system of public improvements, the building of streets or alleys, the appointment of officials, the designation of their duties and how they should be performed, and all other matters purely of local interest, advantage and convenience should be left* to the people of Denver for their own determination. This did not in any wise relieve them from the operation of the general law or constitution of the State, nor was it desired that such a condition should exist. The laws of the state and its constitution were as much in force after the adoption of the XX article as before. All public and governmental duties which the people of the new body politic or the corporation itself were to perform, were still binding upon them. The policy of the state government or of the people in reference to the state government was still to be fixed in every part of the state. *The XX article did not set apart a territorial subdivision of the State, where people were to be freed from the general laws binding upon all other portions of the state. It did not attempt to set up a new government which was independent of the law-making department of the state, and invested with authority to govern itself as it might see fit.* It

had no power to inaugerate or establish a revenue *or judicial system* of its own without regard to other portions of the state. Whatever public laws the general assembly might see fit to enact were to apply here, as elsewhere, and to affect the citizens of Denver as they did the citizens of other communities and in the same manner. This was not to be a state within a state, but a republican form of government was to exist throughout the entire state. The purpose of the amendment was to give us freedom in local municipal matters, but not to relieve us from the general laws or other portions of the constitution, in public affairs or governmental matters. We *were free to act in matters of local concern, not in matters of public governmental or state concern. Home-rule for cities means home rule in strictly city affairs.* While we were given special powers not enjoyed by all other portions of the state, these powers so conferred, were of a nature that could not affect us as a part of the state. *We were to enjoy self-government in all relations purely local*
64 *and municipal which did not bring us into contact with the state at large, or its political and territorial subdivisions as such.* All general systems of state policy were still in force here and unaffected by the XX article of the constitution. Where that instrument had provided the manner in which governmental acts were to be performed, and had established a system of procedure, the XX article did not relieve the city and county of Denver from their operation. While we were enabled to enjoy certain municipal privileges, we were still bound by all governmental measures which the state might see fit to adopt and enforce. *It was therefore with reference to these purely local and municipal affairs, that the charter convention was authorized to act.* * * *

To state the matter in another form, so far as the municipality proper was concerned, the charter might prescribe the jurisdiction of the officers created by it, *so long as that jurisdiction was limited to municipal affairs, and not in conflict with either the general law of the state or the constitution, but where the constitution of the general law had spoken upon matters of a public and governmental nature, not purely municipal in their scope the XX article did not affect them.*"

If we are capable of comprehending the English language the foregoing quotation coincides with the views expressed in the majority opinion in the Sours case, which views must be and are decisive of this case.

"The constitution is not to be made to mean one thing at one time and another at some subsequent time, when the circumstances may have so changed as perhaps to make a different rule in the case seem desirable."

People *v.* Scott, 9 Colo., 433.

Counsel for respondent seek to avoid the force and effect of the plain, unambiguous and positive language of the Court in the Sours case, by arguing, that the learned Justice who wrote the opinion of the majority, had in mind the "jurisdiction and duties of public officers" only, and as they say that no attempt has been made under the charter to legislate upon the jurisdiction and duties of public

officers, therefore the language of the learned Justice is not applicable to that particular feature of the charter here under discussion.

65 A close analysis of the language of the opinion discloses that there are three separate and distinct things which the people cannot do even by constitutional amendment.

1. Free any portion of the state from the operation of the constitution.

2. Delegate to a charter convention the making of constitutional amendments.

3. Give to a charter convention the power to prescribe the jurisdiction and duties of public officers with respect to state government as distinguished from the municipal or city government.

Under the language used no one of the three things can be done by the people, and it follows, that no *portion* of any one of them can be done; that no portion of the state can be freed from *any* provision of the constitution; that the first step along the road to the accomplishment of either one of the three prohibited acts, is just as much prohibited as the second or third or last steps, and it is the duty of this Court to promptly and emphatically call an immediate halt and a retreat, whenever it is, in a proper manner brought to the attention of the Court, that the first step has been taken or attempted along the forbidden highway.

It should constantly be borne in mind, that Article XX provides that cities of the first and second class may proceed thereunder, and who can say, that if it should appear to other cities of the state, that the charter of the city and county of Denver permitted the citizens thereof to depart from the straight and narrow path of constitutional limitation, we might not have the spectacle of a procession of cities attempting to free themselves from the limitations of the constitution, which might be irksome to them. Such

66 a spectacle or condition would be intolerable and is prevented by the ruling of this Court in the Sours case.

The view we have taken of this case makes it unnecessary to consider other grounds, plausible and of much force, urged by learned counsel for the people and respondent, or to prolong this opinion by a discussion of many principles of law and authorities cited in support thereof to which our attention has been called by counsel for both parties.

Our conclusions are that the propositions presented by this record is not, and since the decision of the Sours case, has not been an open question; that it is there held that authority of the charter convention to legislate under Article XX of the constitution, is limited to matters purely local and municipal in their character; that the provisions of the charter adopted March 29, 1904, increasing the number of judges of the county court to two and changing the time of election of said county judges to May 17, 1904, are invalid and inoperative; that respondent is not entitled to hold and exercise the office of county judge of the city and county of Denver; that the demurrer to the answer and return of respondent should be and is sustained.

This being an original proceeding in this court, it is therefore considered and adjudged that the respondent, Henry V. Johnson, is guilty of usurping, intruding into and unlawfully holding and exercising the office of county judge of the city and county of Denver, state of Colorado, and that by the judgment of this court he, the said Henry V. Johnson, be ousted and excluded from said
67 office and franchise and any and all exercise thereof and that he pay the costs of this proceeding.

Judgment accordingly.

Decision *en banc*.

Justices Steele and Gunter dissenting.

68 In the Supreme Court of the State of Colorado.

THE PEOPLE OF THE STATE OF COLORADO, on the Information of GEORGE STIDGER, the District Attorney of the Second Judicial District of the State of Colorado, on the Relation of CHARLES W. BADGLEY, Appellant,

v.

CHARLES S. ELDER, Appellee.

Order.

The above entitled matter coming on to be heard upon the petition of the appellee therein for a writ of error from the supreme court of the United States to the supreme court of the state of Colorado, and upon examination of the said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the supreme court of the United States the questions presented by the record in said matter, it is Ordered, that a writ of error be and is hereby allowed to this court from the supreme court of the United States, and the bond presented by said petitioner be and the same is hereby approved.

Dated, Denver, Colorado, this 15th day of September, A. D. 1905.

WILLIAM H. GABBERT,

Chief Justice of the Supreme Court of Colorado.

69 [Endorsed:] 5622. In the Supreme Court. The People of the State of Colorado, &c., Appellant, *v.* Charles S. Elder, Appellee. Order. Filed in Supreme Court, Sept. 15, 1905. Horace G. Clark, Clerk.

70 UNITED STATES OF AMERICA, *ss:*

To the people of the state of Colorado, on the information of George Stidger, the district attorney of the second judicial district of the state of Colorado, on the relation of Charles W. Badgley, Greeting:

You are hereby cited and admonished to be and appear at a supreme court of the United States at Washington, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the

office of the clerk of the supreme court of the state of Colorado, wherein Charles S. Elder is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William H. Gabbert, chief justice of the supreme court of the state of Colorado, this 15th day of September, in the year of our Lord one thousand nine hundred and five.

WILLIAM H. GABBERT,
Chief Justice of the Supreme Court of Colorado.

Service of a copy of the within citation is hereby accepted and admitted.

THE PEOPLE OF THE STATE OF COLORADO,
GEORGE STIDGER, AND
CHARLES W. BADGLEY,
By HENRY J. HERSEY, *Their Attorney.*

Due service of the above on me personally admitted this 15th day of Sept. 1905.
GEORGE STIDGER.
CHARLES W. BADGLEY.

71 [Endorsed:] 5622. United States of America, *ss:* Citation. Filed in Supreme Court, Sept. 15, 1905. Horace G. Clark, Clerk.

72 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, To the Honorable the Judges of the Supreme Court of the State of Colorado, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Colorado before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between the People of the state of Colorado, on the information of George Stidger, the district attorney of the second judicial district of the state of Colorado, on the relation of Charles W. Badgley, and Charles S. Elder, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, priv-

ilege, or exemption specially set up or claimed under such clause of the said constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Charles S. Elder, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the supreme court of the United States, together with this writ, so that you have the same at
73 Washington, within 30 days from the date hereof, in the said supreme court, to be then and there held, that the record and proceedings aforesaid being inspected, the said supreme court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 15th day of September, in the year of our Lord one thousand nine hundred and five.

[Seal United States Circuit Court, District of Colorado.]

CHARLES W. BISHOP,
Clerk of the United States Circuit Court
for the District of Colorado,
By ALEXANDER C. HITZLER,
Deputy Clerk.

Allowed by
WILLIAM H. GABBERT,
Chief Justice of the Supreme Court
of the State of Colorado.

74 [Endorsed:] 5622 United States of America, *ss:* Writ of Error (Original) Filed in Supreme Court, Sept. 15 1905 Horace G. Clark Clerk.

75 In the Supreme Court of the State of Colorado.

THE PEOPLE OF THE STATE OF COLORADO, on the Information of GEORGE STIDGER, the District Attorney of the Second Judicial District of the State of Colorado, on the Relation of CHARLES W. BADGLEY, Appellant,

v.

CHARLES S. ELDER, Appellee.

Bond.

Know all men by these presents, That we, Charles S. Elder, as principal, and The Pacific Surety Company, a Corporation organized and existing under the laws of the State of California and doing business under the laws of the State of Colorado, as surety, are held and firmly bound unto the People of the state of Colorado,

George Stidger and Charles W. Badgley, in the sum of one thousand ($1,000.00) dollars, to be paid to the said obligees, their successors, representatives and assigns, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 13th day of September, A. D. 1905.

Whereas, the above named Charles S. Elder has prosecuted a writ of error to the supreme court of the United States to reverse the judgment rendered in the above entitled action by the supreme court of the state of Colorado, now, therefore:

76 The condition of this obligation is such, that if the above named Charles S. Elder shall prosecute his said writ of error to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation to be void; otherwise to remain in full force and effect.

CHARLES S. ELDER. [SEAL.]
PACIFIC SURETY CO.,
By FRANK L. BISHOP, [SEAL.]
Its General Agent.

[Seal Pacific Surety Company of California.]

ARTHUR C. BARTELS, [SEAL.]
Resident Assistant Secretary.

Signed, sealed and delivered in the presence of
M. E. MINTY.

77 [Endorsed:] 5622 In the Supreme Court. The People of the State of Colorado, &c., Appellants, *v.* Charles S. Elder, Appellee. Bond. Approved this 15th day of Sept. 1905 William H. Gabbert Chief Justice Filed in Supreme Court, Sept. 15 1905 Horace G. Clark Clerk.

78 In the Supreme Court of the State of Colorado.

THE PEOPLE OF THE STATE OF COLORADO, on the Information of GEORGE STIDGER, the District Attorney of the Second Judicial District of the State of Colorado, on the Relation of CHARLES W. BADGLEY, Appellant,

v.

CHARLES S. ELDER, Appellee.

Assignment of Errors.

Now comes the appellee, Charles S. Elder, and respectfully submits, that in the record, proceedings, decision and final judgment of the supreme court of the state of Colorado in the above entitled action, there is manifest error, in this, to-wit:

I.

The court erred in holding that the people of the state of Colorado do not have the authority under the constitution and laws of the United States to enact article XX as a part of or as an amendment to their state constitution.

II.

The court erred in holding that the people of the state of Colorado do not have the authority, under the constitution and laws of the United States, to enact section 2 of article XX as a part of or as an amendment to their state constitution.

79

III.

The court erred in holding that the people of the state of Colorado do not have the authority under the constitution and laws of the United States to enact section 3 of article XX as a part of or as an amendment to their state constitution.

IV.

The court erred in holding that article XX of the constitution of the state of Colorado is in conflict with and in contravention of that provision of the constitution of the United States which guarantees to every state a republican form of government.

V.

The court erred in holding that section 2 of article XX of the constitution of the state of Colorado is in conflict with and in contravention of that provision of the constitution of the United States which guarantees to every state a republican form of government.

VI.

The court erred in holding that section 3 of article XX of the constitution of the state of Colorado is in conflict with and in contravention of that provision of the constitution of the United States which guarantees to every state a republican form of government.

VII.

The court erred in holding that article XX of the constitution of the state of Colorado is in conflict with and in contravention of that act of Congress known as the Colorado enabling act.

VIII.

The court erred in holding that section 2 of article XX of the constitution of the state of Colorado is in conflict with and in contravention of that act of Congress known as the Colorado enabling act.

80 IX.

The court erred in holding that section 3 of article XX of the constitution of the state of Colorado is in conflict with and in contravention of that act of Congress known as the Colorado enabling act.

X.

The court erred in holding article XX of the constitution of the state of Colorado to be invalid, as being destructive of a republican form of government in the state of Colorado.

XI.

The court erred in holding section 2 of article XX invalid, as being destructive of a republican form of government in the state of Colorado.

XII.

The court erred in holding section 3 of article XX invalid, as being destructive of a republican form of government in the state of Colorado.

XIII.

The court erred in holding that the people of the state of Colorado do not have the authority, under the constitution and laws of the United States, to provide in their state constitution that the people of the city and county of Denver, one of the subdivisions of said state, may designate of their officers to be provided by their charter, one thereof to perform the acts and duties required of a county treasurer to be done by the constitution and general laws of the state.

XIV.

The court erred in holding that to concede the authority in the people of the state of Colorado under the constitution and laws of the United States, to grant by an amendment to their state constitution to the people of the city and County of Denver the
81 power to designate in a charter to be provided by themselves, an officer of their choosing to perform the acts and duties required of a county treasurer to be done under the constitution and general laws of the state of Colorado, is destructive of a republican form of government.

XV.

The court erred in holding article XX of the constitution of the state of Colorado invalid, in so far as it vests in the people of the city and county of Denver authority to create by their charter the office of treasurer of the city and county of Denver, and to prescribe that the officer to fill such office should be elected in the month of May, 1904, and every four years thereafter, as in said charter prescribed, as being in conflict with that provision of the constitution of the United States which guarantees to every state a republican form of

government, and as being in excess of the constituent power of the people of the state of Colorado as given, defined and limited by the constitution of the United States, and as being destructive of a republican form of government in the state of Colorado.

XVI.

The court erred in holding article XX, and particularly section 2 thereof, invalid as a part of the constitution of the state of Colorado, in so far as it vested in the people of the city and county of Denver, by their charter, authority to fix the term of office of the officer who should perform within said city and county of Denver the duties and functions imposed by the constitution and general laws of the state of Colorado upon county treasurers, as being in conflict with that provision of the constitution of the United States which guarantees to every state a republican form of government, and as being destructive of a republican form of government in the state of Colorado, and as being in excess of the constituent power of
82 the people of the state of Colorado, as such power is given, defined and limited by the constitution of the United States.

XVII.

The court erred in holding article XX, and particularly section 2 thereof, invalid as a part of the constitution of the state of Colorado, in so far as it authorized the people of the city and county of Denver to provide by their charter for the election of an officer who shall perform within the city and county of Denver the duties and functions required by the constitution and general laws of the state of Colorado of county treasurers, at a time chosen by themselves, and not at the time provided in the constitution of the state of Colorado generally for the election of county treasurers in the counties throughout the state, as being in conflict with that provision of the constitution of the United States which guarantees to every state a republican form of government, and as being destructive of a republican form of government in the state of Colorado, and as being in excess of the constituent power of the people of the state of Colorado, as such power is given, defined and limited by the constitution of the United States.

XVIII.

The court erred in holding article XX, and particularly section 3 thereof, invalid as a part of the constitution of the state of Colorado, in so far as said article provided that the county treasurer of the former county of Arapahoe, in office at the time said article went into effect, should become the treasurer of the city and county of Denver, and should continue in such office until his successor should have been duly elected and qualified thereunto, as provided by article XX, as being in conflict with that provision of the constitution of the United States which guarantees to every state a republican form of government, and as being destructive of a republican form

of government in the state of Colorado, and as being in excess
83 of the constituent power of the people of the state of Colorado, as such power is given, defined and limited by the constitution of the United States.

XIX.

The court erred in holding article XX invalid as a part of the constitution of the state of Colorado, in so far as it provides for the establishment of a government in the territory of the city and county of Denver, in abrogation of the general rules of government, particularly those relating to the administration of county affairs, set out in the constitution of the state of Colorado, as being in conflict with that provision of the constitution of the United States which guarantees to every state a republican form of government, and as being destructive of a republican form of government in the state of Colorado, and as being in excess of the constituent power of the people of the state of Colorado, as such power is given, defined and limited by the constitution of the United States.

XX.

The court erred in holding that it is not within the authority of the people of the state of Colorado, under the constitution and laws of the United States, for them to enact an amendment to their constitution for a special purpose, and thereby have said special constitutional provision take the place of and be effective in lieu of any general constitutional provisions of the state, as being in conflict with that provision of the constitution of the United States which guarantees to every state a republican form of government, and as being destructive of a republican form of government in the state of Colorado, and as being in excess of the constituent power of the people of the state of Colorado, as such power is given, defined and limited by the constitution of the United States.

84 XXI.

The court erred in holding article XX to be invalid as a part of the constitution of the state of Colorado, in so far as it provided a scheme of local government in and for the territory embraced within the city and county of Denver, which government should perform therein both municipal and county functions, as being in conflict with that provision of the United States which guarantees to every state a republican form of government, and as being destructive of a republican form of government in the state of Colorado, and as being in excess of the constituent power of the people of the state of Colorado, as such power is given, defined and limited by the constitution of the United States.

Wherefore, the said Charles S. Elder prays that the judgment and decision aforesaid may be reversed, annulled and altogether held for naught, and that he may be restored to all things which he has lost by the action, and because of said judgment and decision.

ROBERT H. ELDER,
MILTON SMITH,
CHAS. R. BROCK,
Attorneys for Appellee, Charles S. Elder.

85 [Endorsed:] 5622. In the Supreme Court. The People of the State of Colorado, &c., Appellants, *v.* Charles S. Elder, Appellee. Assignment of Errors. Filed in Supreme Court, Sep. 15, 1905. Horace G. Clark, Clerk. Robert H. Elder, Milton Smith, Charles R. Brock, Attorneys for Appellee.

Endorsed on cover: File No. 19,931. Colorado supreme court. Term No. 429. Charles S. Elder, plaintiff in error, *vs.* The People of the State of Colorado, on the information of George Stidger, the district attorney of the second judicial district of the State of Colorado, on the relation of Charles W. Badgley. Filed October 10th, 1905. File No. 19,931.